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1 UNITED STATES PATENT AND TRADEMARK OFFICE

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3  
4 BEFORE THE BOARD OF PATENT APPEALS  
5 AND INTERFERENCES  
6

7  
8 *Ex parte* GREGORY L. TRAUTH, CLINTON D. BROWN  
9 and DANIEL S. ARGO  
10

11  
12 Appeal 2008-1168  
13 Application 09/998,941  
14 Technology Center 3600  
15

16  
17 Decided: June 26, 2008  
18  
19

20 *Before* WILLIAM F. PATE, III, MURRIEL E. CRAWFORD and BIBHU  
21 R. MOHANTY, *Administrative Patent Judges*.

22  
23 PATE, III, *Administrative Patent Judge*.

24  
25 DECISION ON APPEAL  
26

27 STATEMENT OF CASE

28 The Appellants appeal under 35 U.S.C. § 134 (2002) from a Final  
29 Rejection of claims 1-33. We have jurisdiction under 35 U.S.C. § 6(b)  
30 (2002).

1       The Appellants claim electronic network implemented methods for  
2     notifying employees of a company (such as service representatives) that  
3     customer feedback messages (such as complaints and complements) have  
4     been received so that the messages can be addressed.

5       Representative independent claims 1 and 22 read as follows:

6           1.     An electronic network implemented method for notifying  
7           personnel of customer feedback messages, comprising:  
8                 receiving from a customer a customer feedback message  
9           in an electronic format; automatically storing said feedback  
10          message from said customer in a database in response to  
11          receipt of said customer feedback message in said electronic  
12          format;

13                 and

14                 automatically creating and transmitting an electronic  
15           notification message to a first employee of an employer, said  
16           electronic notification message providing an indication that a  
17           feedback message exists, said automatically creating and  
18           transmitting occurring in response to at least one of said  
19           receiving and said automatically storing.

20  
21          22.    An electronic network implemented method for receiving  
22          and tracking customer feedback messages, comprising:

23                 receiving a customer feedback message of a customer;  
24          storing said customer feedback message in a database;

25                 creating an electronic notification message indicating that  
26          a customer feedback message has been received from an  
27          individual customer;

28                 promptly transmitting said notification message to an  
29          employee of an employer upon receipt of said customer  
30          feedback message;

31                 accessing said database using a web server to retrieve  
32          said customer feedback message to a web browser; and

1 displaying to said employee said customer feedback  
2 message within a web page displayed by said web browser.  
3

4 The prior art relied upon by the Examiner in rejecting the claims is:

5 Bayer US 2002/0103693 A1 Aug. 1, 2002

6 The Examiner rejected claims 1-4, 7, 17, 18 and 33 under 35 U.S.C.  
7 § 102(e) as lacking novelty over Bayer.

8 The Examiner rejected claims 5, 6, 8-16 and 19-32 under 35 U.S.C.  
9 § 103(a) as unpatentable over Bayer.

10 We AFFIRM.

11  
12 ISSUES

13 The following issues have been raised in the present appeal.

14 1. Whether the Appellants have shown that the Examiner erred in  
15 rejecting claims 1-4, 7, 17, 18 and 33 as lacking novelty over Bayer.

16 2. Whether the Appellants have shown that the Examiner erred in  
17 rejecting claims 5, 6, 8-16 and 19-32 as unpatentable over Bayer.  
18

19 FINDINGS OF FACT

20 The record supports the following findings of fact (FF) by a  
21 preponderance of the evidence.

22 1. Bayer discloses an electronic network 110, 112, 114  
23 implemented method for notifying personnel including receiving an  
24 electronic customer feedback message 710 from a customer, automatically

1 storing the feedback message in a database 600, and transmitting an  
2 electronic notification message 810 to a first employee of an employer to  
3 provide an indication that a feedback message exists in response to receiving  
4 and/or automatically storing the feedback message (Figs. 1, 2, 6-9E; ¶¶  
5 [0030], [0032], [0057], [0061], [0068], [0069], [0071], [0073], [0078]).  
6 Bayer also discloses accessing the database using a web server to retrieve  
7 the customer feedback message to a web browser by other customers  
8 ([0079]).

9       2. Bayer inherently discloses automatically creating the electronic  
10 notification message because the message for forwarding the feedback  
11 message must be created before it is transmitted.

12       3. Bayer does not specifically disclose attaching an audio file to  
13 the notification message.

14       4. Bayer does not specifically disclose displaying for the  
15 employee, the customer feedback message within a web page displayed by  
16 the web browser.

## 17 18 PRINCIPLES OF LAW

19       “A claim is anticipated only if each and every element as set forth in  
20 the claim is found, either expressly or inherently described, in a single prior  
21 art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d  
22 628, 631 (Fed. Cir. 1987). In addition, “[i]t is well settled that a prior art  
23 reference may anticipate when the claim limitations not expressly found in

1 that reference are nonetheless inherent in it.” *In re Cruciferous Sprout*  
2 *Litig.*, 301 F.3d 1343, 1349 (Fed. Cir. 2002).

3 “Section 103 forbids issuance of a patent when ‘the differences  
4 between the subject matter sought to be patented and the prior art are such  
5 that the subject matter as a whole would have been obvious at the time the  
6 invention was made to a person having ordinary skill in the art to which said  
7 subject matter pertains.’” *KSR Int’l Co. v. Teleflex Inc.*, 127 S.Ct. 1727,  
8 1734 (2007). The question of obviousness is resolved on the basis of  
9 underlying factual determinations including (1) the scope and content of the  
10 prior art, (2) any differences between the claimed subject matter and the  
11 prior art, (3) the level of skill in the art, and (4) where in evidence, so-called  
12 secondary considerations. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18  
13 (1966). In *KSR*, the Supreme Court reaffirmed principles based on its  
14 precedent that “[t]he combination of familiar elements according to known  
15 methods is likely to be obvious when it does no more than yield predictable  
16 results.” *KSR*, 127 S.Ct. at 1739. The Court also explained that “[w]hen a  
17 work is available in one field of endeavor, design incentives and other  
18 market forces can prompt variations of it, either in the same field or a  
19 different one. If a person of ordinary skill can implement a predictable  
20 variation, § 103 likely bars its patentability. For the same reason, if a  
21 technique has been used to improve one device, and a person of ordinary  
22 skill in the art would recognize that it would improve similar devices in the  
23 same way, using the technique is obvious unless its actual application is  
24 beyond his or her skill.” *Id.* at 1740.

The Court further noted that “[t]o facilitate review, this analysis should be made explicit.” *Id.* at 1741, citing *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006) (“[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness”). However, “the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.” *Id.* at 1741.

## ANALYSIS

Claims 1-4, 7, 17, 18 and 33

The Examiner rejected these claims as lacking novelty over Bayer contending that Bayer discloses each and every recited limitation (Ans. 3-5). The Appellants separately argue various claims under this rejection, and thus, we address these separately argued claims in detail *infra*.

### *Claim 1*

The Appellants contend that Bayer does not disclose automatically creating and transmitting a message to an employee in response to either receiving or storing customer feedback as recited in claim 1 (App. Br. 8). In this regard, the Appellants argue that the recited term “automatic” refers to the immediacy of the electronic notification message and rely on portions of the Specification that state the objective of the invention is to provide “nearly immediate” or “real-time” notification of customer complaints to

1 support this argument (App. Br. 8 and 9; Reply Br. 4). However, the  
2 Appellants' argument fails from the outset because it is not based on  
3 limitations appearing in the claims. *In re Self*, 671 F.2d 1344, 1348 (CCPA  
4 1982). We note that absent claim language carrying a narrow meaning, the  
5 Examiner should only limit the claim based on the specification or  
6 prosecution history when those sources expressly disclaim the broader  
7 definition. *In re Bigio*, 381 F.3d 1320, 1325 (Fed Cir. 2004). Such a  
8 disclaimer is absent in the present case. The term "automatic" does not  
9 connote a time restriction or limit.

10 The Appellants also argue that automatic notification is precluded in  
11 Bayer because the disclosed system performs intervening reviews of  
12 feedback information (App. Br. 10). This argument is not persuasive and we  
13 agree with the Examiner that the limitation "automatically" does not  
14 preclude a multi-step process, and is satisfied by use of automation machines  
15 (i.e., electronics) to perform a task (i.e., transmit the message notification)  
16 (Ans. 13 and 14). As the Examiner also noted, even the Appellants' own  
17 disclosed embodiment implements the intervening step of determining who  
18 to send the message to based on whether a customer satisfaction exceeds a  
19 threshold value (Specification: Fig. 3, Step 304, Pg. 8, l. 17-Pg. 9, l. 14; Ans.  
20 13). Therefore, in view of the above, the Appellants have not shown that the  
21 Examiner erred in rejecting claim 1 as lacking novelty over Bayer.

22 Claim 3

23 The Appellants also separately argue with respect to dependent claim  
24 3 that Bayer does not disclose the recited "receiving a customer satisfaction



1 rating” limitation because Bayer discloses receiving customer feedback and  
2 determining the severity or nature of the customer's comment or complaint  
3 (App. Br. 11). This argument is without merit because the customer  
4 feedback disclosed in Bayer clearly includes customer satisfaction rating in  
5 which the customer rates the travel services received (Ans. 14 and 15). For  
6 example, Figures 9A-9E of Bayer illustrate various embodiments of  
7 customer feedback forms in which the customer rates various aspects of  
8 travel services based on his/her level of satisfaction (Figs. 9A-9E).  
9 Therefore, the Appellants have not shown that the Examiner erred in  
10 rejecting claim 3.

11 Claims 17

12 The Appellants again rely on arguments submitted relative to claim 1  
13 in asserting the patentability of claims 17 (App. Br. 12). However, we find  
14 the Appellants’ arguments unconvincing for the reasons discussed *supra*  
15 relative to claim 1.

16 The Appellants further argue that claim 17 specifically recites  
17 “promptly transmitting” the electronic notification message to an employee  
18 upon receipt of a customer feedback message, the implicit argument being  
19 that the system of Bayer does not promptly transmit the electronic  
20 notification message (App. Br. 12). However, as noted by the Examiner, the  
21 term “promptly” is “relative in nature and generally means that something is  
22 done quickly or expeditiously,” and we agree that this limitation is satisfied  
23 by the system of Bayer which utilizes an electronic system to address  
24 customer complaints more promptly than prior art customer feedback

1 systems (Ans. 13). Thus, the Appellants have not shown that the Examiner  
2 erred in rejecting claim 17 as lacking novelty over Bayer.

3 Claim 33

4 The Appellants rely on arguments submitted relative to claim 1 in  
5 arguing the patentability of claim 33 (App. Br. 13). Thus, for the same  
6 reasons discussed *supra* relative to claim 1, we find that the Appellants have  
7 not shown that the Examiner erred in rejecting claim 33 as lacking novelty  
8 over Bayer.

9  
10 The remaining dependent claims 2, 4, 7 and 18 that stand rejected as  
11 lacking novelty over Bayer are not argued separately by the Appellants.  
12 Thus, the Appellants have also failed to show that the Examiner erred in  
13 rejecting these dependent claims. *See* 37 C.F.R. § 41.37(c)(1)(vii).

14  
15 Claims 5, 6, 8-16 and 19-32

16 The Examiner rejected these claims as unpatentable over Bayer. The  
17 Appellants separately argue various claims under this rejection, and thus, we  
18 address these separately argued claims in detail *infra*.

19 Claims 5 and 6

20 The Appellants contend that because Bayer does not disclose  
21 “receiving a customer satisfaction rating” as recited in claim 3 from which  
22 claims 5 and 6 ultimately depend, Bayer cannot teach or suggest the  
23 remaining recited steps of claims 5 and 6 that utilize the received customer  
24 satisfaction rating (App. Br. 13). However, as discussed *supra* relative to

1 claim 3, we find the Appellants' argument to be without merit. Moreover,  
2 Bayer discloses determining whether the received customer feedback should  
3 be forwarded to the service provider based on the severity of the feedback,  
4 thereby disclosing the recited threshold determination recited in these claims  
5 (Fig. 8, Step 806; [0071]). Thus, the Appellants have failed to show that the  
6 Examiner erred in rejecting dependent claims 5 and 6.

7 Claims 12-14

8 The Appellants again rely on the unconvincing arguments that Bayer  
9 does not teach or suggest "receiving a customer satisfaction rating" or the  
10 recited threshold determination, but do not present any other arguments with  
11 respect to these claims (App. Br. 14). Thus, for the same reasons addressed  
12 *supra*, the Appellants have failed to show that the Examiner erred in  
13 rejecting claims 12-14 as unpatentable.

14 Claim 15

15 The Appellants again argue that Bayer does not teach or suggest  
16 "satisfaction rating" as similarly argued with respect to claim 3 (App. Br. 15  
17 and 16). The Appellants further argue that because Bayer teaches generation  
18 of ratings of travel service providers based on periodic queries of stored  
19 data, it does not teach automatically generating an electronic notification  
20 message as argued with respect to claim 1 (App. Br. 15 and 16). However,  
21 for the same reason discussed *supra* relative to claims 1 and 3, we find the  
22 Appellants' arguments unconvincing. The fact that Bayer discloses  
23 generation of additional ratings of travel service providers which is not  
24 generated by the Appellants' invention does not detract from the fact that the

1 customers provide ratings of the travel service providers in the system of  
2 Bayer.

3 The Appellants also argue that Bayer does not suggest “attaching said  
4 audio file to said notification message” as specifically recited in claim 15  
5 (App. Br. 15; FF 3). The Examiner refers to the prior art rejections of claims  
6 1-14 and 32 as well as ¶ 78 of Bayer to contend that the recited feature  
7 would have been obvious to one of ordinary skill in the art (Ans. 11 and 16).  
8 In this regard, the Examiner states that Bayer discloses creating an audio file  
9 of the spoken customer feedback message and transmitting the electronic  
10 notification message wherein feedback is forwarded to an appropriate  
11 service provider’s representative via an electronic mail message (Ans. 8 and  
12 9). While Bayer does not appear to explicitly state that the audio file is  
13 attached, the Examiner takes Official Notice that transmitting and accessing  
14 audio messages through an audio file is well known in the art (Ans. 10).  
15 Moreover, the Examiner reasoned that it would have been obvious to one of  
16 ordinary skill in the art to modify Bayer to provide the customer feedback  
17 message to the service provider’s representative in the original audio format  
18 to facilitate analysis of a customer's emotional state based on voice  
19 intonations, etc. (Ans. 10). We find this articulated reason set forth by the  
20 Examiner to be rational and sufficient to support the legal conclusion that  
21 attaching an audio file to the transmitted electronic notification would have  
22 been obvious to one of ordinary skill in the art. *See KSR*, 127 S.Ct. at 1741.

23 The Appellants further argue that Bayer fails to disclose “transmitting  
24 a second electronic notification message to a second employee of said

1 employer if said satisfaction rating is below said threshold” as also recited in  
2 claim 15 (App. Br. 16 and 17). The Examiner notes that Bayer discloses  
3 forwarding of aggregated feedback reports to a travel manager as well as a  
4 service provider representative based on a threshold determination, but  
5 acknowledges that Bayer fails to disclose that transmission of the second  
6 notification message is to a second employee of the same employer (Ans. 7).  
7 However, the Examiner states that it is well known in the art for a manager  
8 of a company to receive aggregated feedback reports for review and for  
9 customer service representatives to receive messages in order to address  
10 customer complaints (Ans. 8). Thus, the Examiner concludes that it  
11 would have been obvious to one of ordinary skill in the art to provide the  
12 aggregated feedback reports disclosed in Bayer to the managers (i.e., second  
13 employee) in addition to providing the electronic notification message  
14 to the service representatives (i.e., first employee) in order to allow these  
15 employees to focus on their respective roles within the company (Ans. 7 and  
16 8). We find the Examiner’s articulated reason to be rational and agree with  
17 the Examiner that transmitting a second electronic notification message to a  
18 second employee of the employer based on a threshold determination would  
19 also have been obvious to one of ordinary skill in the art. *See KSR*, 127  
20 S.Ct. at 1741.

21 Therefore, in view of the above, we agree with the Examiner that  
22 claim 15 would have been obvious to one of ordinary skill in the art in view  
23 of Bayer and find that the Appellants have failed to show that the Examiner  
24 erred in rejecting claim 15.

1                   Claim 20

2           The Appellants rely on the same argument based on the limitation  
3   “promptly transmitting said notification message” set forth relative to claim  
4   17 in arguing the patentability of claim 20 (App. Br. 17). Thus, because  
5   Appellants’ argument for patentability of claim 17 is not persuasive as  
6   discussed *supra*, we likewise find that the Appellants have not shown that  
7   the Examiner erred in rejecting claim 20 as unpatentable over Bayer.

8                   Claim 22

9           The Appellants initially rely on the same argument based on the  
10   limitation “promptly transmitting said notification message” set forth  
11   relative to claim 17 which we found unconvincing as discussed *supra* (App.  
12   Br. 17). The Appellants further argue that Bayer merely discloses posting  
13   feedback from travelers on a website for viewing by other travelers, and  
14   thus, contends Bayer does not suggest “displaying to said employee said  
15   customer feedback message within a web page displayed by said web  
16   browser,” as recited in claim 22 (App. Br. 17 and 18; FF 4).

17           The Examiner concedes that Bayer does not specifically disclose this  
18   limitation (Ans. 11, 13). However, the Examiner takes Office Notice that  
19   making audio files available on the Internet using a link to a web page is  
20   well known in the art and reasons that it would have been obvious to one of  
21   ordinary skill in the art to allow the employees to use a web server to  
22   retrieve the audio file of the customer feedback message by selection of a  
23   link in order to facilitate global access to audio feedback, such global access  
24   being a well recognized advantage of providing data through the Internet

1 (Ans. 12). We agree, and find that the Examiner's articulated reason to be  
2 rational and sufficient to support the legal conclusion of obviousness. *See*  
3 *KSR*, 127 S.Ct. at 1741.

4 The Appellants' argument that Examiner is engaging in impermissible  
5 hindsight and that there is no suggestion in Bayer motivating the  
6 modification suggested is noted (App. Br. 20). However, explicit teaching is  
7 not required to properly establish a prima facie case of obviousness. *Id.* at  
8 1741. Providing remote access to stored data via a web server is a well  
9 known technique and it would have been obvious to one of ordinary skill in  
10 the art that providing remote access would improve customer feedback  
11 systems in the same manner already well appreciated in the art. *Id.* at 1740.

12 The Appellants further argue that Bayer does not teach a notification  
13 message and a transmission of a message (App. Br. 20). We disagree and  
14 find that Bayer inherently discloses both messages because a forwarding  
15 message with the appropriate addressee (e.g., to the employee of the travel  
16 service provider) would have to be created before forwarding the customer  
17 feedback message (FF 2). Thus, the Appellants' arguments fail to convince,  
18 and the Appellants have not shown that the Examiner erred in rejecting  
19 claim 22 as unpatentable over Bayer.

20 Claim 27

21 The Appellants again argue that Bayer does not suggest "providing a  
22 link to a web page enabling said employee to playback said audio file" (App.  
23 Br. 21). However, as discussed *supra* with respect to claim 22, we concur  
24 with the Examiner that the recited invention would have been obvious to one

1 of ordinary skill in the art. While the Appellants have objected to the  
2 Examiner's Official Notice and disputes the Examiner's assertion, the  
3 Examiner is correct in pointing out that the Appellant has not specifically  
4 identified the supposed errors of the Examiner's Official Notice (App. Br.  
5 22; Ans. 19). In addition, the Examiner has cited numerous documents in  
6 support of the Official Notice (Ans. 19). With respect to the Appellants'  
7 assertion that the Examiner's conclusion does not address the technical  
8 feasibility of making audio files available on the Internet using a link to a  
9 webpage, we concur with the Examiner that such limitations do not appear  
10 in the claims and that web implementation would have been within the skill  
11 of one of ordinary skill in the art, such technical feasibility being well  
12 known (App. Br. 22; Ans. 19 and 20). Thus, the Appellants have not shown  
13 that the Examiner erred in rejecting claim 27 as unpatentable over Bayer.

14 Claim 28

15 The Appellants contend that Bayer does not suggest "automatically  
16 serv[ing] said electronic notification message to an employee of an employer  
17 promptly upon receipt of said customer complaint" or the recited web server  
18 that enables the employee to retrieve the complaint record (App. Br. 23).  
19 We disagree for the reasons set forth *supra* relative to claims 17, 22 and 27.  
20 No other arguments have been presented by the Appellants as to the  
21 patentability of independent claim 28. Therefore, the Appellants have failed  
22 to show that the Examiner erred in rejecting independent claim 28 as  
23 unpatentable over Bayer.



The remaining claims 8-11, 16, 19, 21, 23-26 and 29-32 that stand rejected as unpatentable over Bayer are not argued separately by the Appellants. Thus, the Appellants have also failed to show that the Examiner erred in rejecting these claims as well. *See* 37 C.F.R. § 41.37(c)(1)(vii).

## CONCLUSIONS

1. The Appellants have not shown that the Examiner erred in rejecting claims 1-4, 7, 17, 18 and 33 as lacking novelty over Bayer.

2. The Appellants have not shown that the Examiner erred in rejecting claims 5, 6, 8-16 and 19-32 as unpatentable over Bayer.

## ORDER

The Examiner's rejections of claims 1-33 are AFFIRMED.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2007).

AFFIRMED

JRG

Appeal 2008-1168  
Application 09/998,941

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